

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PAUL O'BEIRNE, an individual,

Plaintiff,

v.

TROY STAFFORD, an individual,

Defendant.

No. 2:15-cv-01330-RSL

**PLAINTIFF'S MOTION TO COMPEL
DEPOSITION IN AID OF
EXECUTION OF JUDGMENT AND
FOR SANCTIONS**

NOTE ON MOTION CALENDAR:
January 4, 2019

I. INTRODUCTION AND RELIEF REQUESTED

Plaintiff Paul O'Beirne (hereinafter "Plaintiff" or "O'Beirne"), through his undersigned counsel, and pursuant to Federal Rules of Civil Procedure 37 and 69, LCR 37, and the Final Judgment entered against Defendant Troy Stafford ("Stafford"), hereby moves the Court for an order compelling Stafford to appear for and produce documents at depositions *duces tecum* in aid of execution of judgment, and for sanctions, and in support thereof Plaintiff states as follows:

II. FACTS AND ARGUMENT

On December 13, 2016, this Court entered default judgment in against Stafford and in favor of Plaintiff in the amount of \$1,932,500.00, plus post judgment interest.¹ ECF No. 42. The judgment was based on Stafford's default on a loan he obtained from Plaintiff. The details of Stafford's default are set forth in Plaintiff's previously filed Motion for Default Judgment. ECF No. 40. Following the entry of default judgment, Plaintiff submitted his prevailing party bill of taxable costs (ECF No. 44) and served Stafford with a copy by email on January 3, 2017. *See* Declaration of John H. Jamnback ("Jamnback Decl.") Ex. 1. Stafford responded by email on January 3, 2017 as follows:

I am bankrupt. You Need to go through the BK courts.
I believe your supposed to stop contacting my me as well.

YSDB²
Troy Stafford
623-224-7150

Jamnback Decl. Ex. 2.

Plaintiff's counsel requested that Stafford identify the referenced bankruptcy, but he did not respond, and PACER searches did not disclose an active bankruptcy for Stafford. Jamnback Decl. ¶ 5, Ex. 3. On April 26, 2017, Plaintiff's counsel reconfirmed that Stafford was not in active bankruptcy with a PACER search, and prepared a letter demanding payment of the judgment, and alternatively requesting dates for Stafford's

¹ In addition, O'Beirne had previously been awarded attorney's fees in the amount of \$2,737.50 as a discovery sanction. ECF No. 37.

² Per the Urban Dictionary "YSDB" is an acronym for a vulgarity.



1 deposition. Jamnback Decl. ¶¶ 6 – 7, Ex. 4. Stafford did not respond to the letter.
2 Jamnback Decl. ¶ 7.

3 Plaintiff then spent over a year trying to locate Stafford using private investigation
4 firms. Jamnback Decl. ¶¶ 8-9. Stafford was finally located and personally served with a
5 notice of deposition and deposition subpoena duces tecum on September 17, 2018. ECF
6 No. 47. Pursuant to the deposition notice and subpoena Stafford's deposition was
7 scheduled to take place on October 23, 2018 at the One Arizona Center, 400 East Van
8 Buren Street, Suite 1900, Phoenix, AZ 85004 at 9:00 a.m. Jamnback Decl. Ex. 5.
9 Stafford's wife, Xochitl Stafford, was also personally served, and scheduled for the same
10 date and location at 2:00 p.m. ECF No. 48; Jamnback Decl. Ex. 6.

12 On October 1, 2018, Stafford faxed a "Response to Subpoena" to Plaintiff's
13 attorneys and cc'ing the Court. Jamnback Decl. ¶ 10, Ex. 7. The response indicated that
14 Stafford and his wife did not intend to appear for their depositions, claiming that the
15 process server engaged in criminal activity in serving the subpoenas. *Id.* Stafford further
16 stated that he would be turning "all of our findings over to the Attorney Generals (sic)
17 Office, the Federal Trade Commission and the local Law Enforcement." *Id.*

19 Plaintiff's attorney responded on October 2, 2018, offering to reschedule the
20 depositions to a mutually agreeable date within the next 30 days, but noting that unless an
21 agreement was reached regarding rescheduling, the depositions would proceed as noted.
22 Jamnback Decl. ¶ 11, Ex. 8. Stafford did not respond. Jamnback Decl. ¶ 12.

24 On October 23, 2018, Plaintiff's undersigned attorney personally appeared for
25 each deponents' deposition and waited approximately fifteen minutes for each to appear
26



1 before going on the record, but neither Stafford nor his wife appeared.³ Jamnback Decl.
 2 ¶¶ 13 – 16, Exs. 9 & 10. On December 12, 2018, Plaintiff’s attorney wrote to Stafford
 3 requesting a discovery conference regarding Stafford’s failure to appear at his deposition.
 4 Jamnback Decl. ¶¶ 16 – 18, Ex. 11. Stafford did not respond. *Id.*

5
 6 Federal Rule of Civil Procedure 69 governs post-judgment discovery, and provides
 7 that “in aid of the judgment or execution, the judgment creditor ... may obtain discovery
 8 from any person—including the judgment debtor—as provided in these rules or by the
 9 procedure of the state where the court is located.” Fed. R. Civ. P. 69(a)(2).⁴

10 Post-judgment discovery in aid of execution of a judgment “permits the judgment
 11 creditor to obtain information about the debtor’s current and past financial assets which
 12 could reasonably lead to the discovery of concealed or fraudulently transferred assets.”
 13 *Cent. States, Se. & Sw. Areas Health and Welfare Fund v. Neurobehavioral Associates,*
 14 *P.A.*, No. 93-6169, 1997 WL 757879, at *2 (N.D. Ill. Dec. 2, 1997) (citation and internal
 15 quotation marks omitted); *N. Seattle Health Ctr. Corp. v. Allstate Fire & Cas. Ins. Co.*, No.
 16 C14-1680JLR, 2017 U.S. Dist. LEXIS 55447, at *8 (W.D. Wash. Apr. 11, 2017) (Rule 69
 17 “is designed to allow the judgment creditor to identify assets from which the judgment may
 18 be satisfied.”). “The scope of discovery allowed under Rule 69 is broad.” *Beautyko LLC v.*
 19 *Amazon Fulfillment Servs.*, No. C16-355 RSM, 2018 U.S. Dist. LEXIS 64746, at *6-7

22
 23 ³ Plaintiff’s counsel remained at the deposition location until approximately 4:00 p.m., and
 24 neither deponent appeared.

25 ⁴ Plaintiff elects to use the federal discovery rules in aid of execution of judgment. *See FM.*
 26 *Indus., Inc. v. Citicorp Credit Services, Inc.*, 656 F. Supp. 2d 795, 797 (N.D. Ill. 2009)
 (discussing that a judgment creditor may obtain post-judgment discovery by the procedure
 of the forum state or as provided in Rule 69.

(W.D. Wash. Apr. 16, 2018) citing *Republic of Argentina v. NML Capital, Ltd.*, 134 S. Ct. 2250, 2254, 189 L. Ed. 2d 234 (2014) ("The rules governing discovery in post judgment execution proceedings are quite permissive."). "The judgment creditor may use any of the discovery devices provided for in Rules 26 through 37 of the Federal Rules of Civil Procedure." *Cent. States*, 1997 WL 757879, at *2 (citing 12 Charles Alan Wright, *et. al.*, *Federal Practice and Procedure*, § 3014 at 160 (2d ed. 1997)). This includes compelling a judgment debtor to submit to a deposition in aid of execution. *Consolidated Freightways Corp. of Delaware*, 1995 WL 683587, at *1, 3 (stating that depositions in aid of execution are a permissible discovery tool under Rule 69(a)).

Accordingly, Plaintiff is entitled to post-judgment discovery in aid of execution, which includes taking Stafford's deposition and requiring him to produce the requested documents. Plaintiff respectfully requests that Stafford be compelled to appear for and fully cooperate at depositions in aid of execution of judgment and to produce the documents demanded in the subpoena and notice at his rescheduled deposition. Plaintiff further requests that Stafford's rescheduled deposition be held at the offices of Plaintiff's attorney in Seattle, Washington. This relief is appropriate under the Federal Rules and particularly necessary here, where Stafford has failed to attend his previously noticed deposition near his home in Arizona, forcing Plaintiff to incur unnecessary travel expenses.

Plaintiff also seeks sanctions against Stafford. Pursuant to Rule 37, Stafford's failure to attend duly-noticed depositions, as well as Plaintiff's motion to compel, if successful, may result in sanctions being awarded against Stafford, including Plaintiff's reasonable attorneys' fees and costs. Fed.R.Civ.P. 37(a)(5)(A), 37(d)(3).

See *MetroPCS v Raymond*, 2016 U.S. Dist. LEXIS 183349 at *1 (finding that "Plaintiff is



entitled to its attorneys' fees and costs for preparing for Defendant's deposition, appearing for Defendant's deposition, and having to bring this Motion [to compel] as a result of Defendant's failure to appear at her deposition [in aid of execution of judgment]"); *Goldman v. Alhadeff*, 131 F.R.D. 188, 192 (W.D. Wash. 1990) (awarding costs and fees incurred for motions to compel discover and in preparation for deposition, including travel costs).

III. CONCLUSION

Plaintiff is entitled to collect on his judgment against Stafford and to pursue all available post-judgment discovery allowed under the Federal Rules, but Stafford has refused to cooperate. As such, Plaintiff respectfully requests that the Court compel Stafford to appear for and fully cooperate at his deposition *duces tecum* in aid of execution, produce the requested documents, and award Plaintiff appropriate sanctions against Defendants, including payment of Plaintiff's attorneys' fees, costs, and travel expenses resulting from Stafford's willful failure to appear at his duly-noticed deposition and in making this Motion. A proposed order is submitted herewith.

DATED: December 20, 2018.

YARMUTH WILSDON PLLC

By: /s/ John H. Jamnback
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 Seattle, Washington 98101
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Attorneys for Plaintiff Paul O'Beirne

CERTIFICATE OF SERVICE

I hereby certify that on this date, I placed in the U.S. Mail, postage prepaid, a copy of the foregoing document addressed to the following:

Troy Stafford
9439 E. Trailside View
Scottsdale, AZ 85255

Troy Stafford
15560 N. Frank Lloyd Wright Blvd.
Suite B4-299
Scottsdale, AZ 85260

I also emailed the foregoing document to the following email addresses:

tstafford4@icloud.com

troy@gscapital.us

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED: December 20, 2018 at Seattle, Washington.

/s/ Sue Stephens
Sue Stephens, Legal Assistant